**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORIDNARY ORIGINAL CIVIL JURISIDICTION**

CHAMBER SUMMONS NO.237 OF 2004
IN
EXECUTION APPLICATION NO.245 OF 1999
IN
A.M.NO.M-003 OF 1999

M/s.Option Pratibhuti & Vinimay Co.Ltd. .. Applicants

Vs.

Devendra Jain .. Respondent

And

Anil Badrilal Agrawal & Anr. .. Claimants

Mr.D.D.Madan i/b J.N.Shirdhonkar for the plaintiff

Mr.T.G.Vora i/b Tamhane & Co. for the defendant

**CORAM: S.U. KAMDAR, J.**

**DATE : 4TH MAY, 2005**

**P.C. :**

1. The present Chamber Summons is taken out under Order XXI Rule 54 and Rule 58 for raising of an attachment dt.7.8.99 in respect of property being Flat bearing no.Flat No.503/B, 5th Floor, Varun Building, Shital Nagar, Ashok Chakravarthy Road No.1, Kandivali East, Mumbai 400 101. The present chamber summons is also taken out for setting aside the order passed by

the Commissioner for Taking Account dt.15.10.03 rejecting the claim of the applicant for holding that the said flat is purchased by the applicant bonafide and without notice of any such decree passed against the defendant. Applicant in support of contention that the applicant is lawful purchaser of the aforesaid flat has relied upon agreement dt.15.7.99. It has been duly registered on 9.8.99. He further contends that on 3.11.98 i.e. almost 6 months prior to execution of agreement the applicant is supposed to have made payment by cheque of sum of Rs.4.0 Lacs to the respondent who is the Judgment Debtor. There is an award decree against respondent dt.30.4.99. Under the said award decree Rs.14,21,599/- is liable to be paid by the respondent to the applicant herein.

2. I have considered the case of the applicant. I find that the present applicant is not a bonafide purchaser of the said property without notice. Firstly, because it is an admitted position that the applicant and respondent are family friends. It is also equally admitted position that the earlier consideration amount of Rs.4.0 lacs is supposed to have paid 6 months prior to execution of agreement

dt.15.7.99. It is further admitted position that the said cheque of Rs.4.0 lacs has been issued by depositing Rs.4.0 Lacs cash in bank amount at the same time when the said cheque has been issued. Furthermore, the agreement which has been relied upon interalia states that the said 4.0 Lacs which is consideration for said flat will be paid subsequent to the execution thereof. Clause 1 of the said agreement reads as under:

> "or for the lump sum price of Rs.4,00,000/- (Rs.Four Lacs only) to be paid by the Purchasers to the Vendors in the manner stipulated hereunder and subject to other terms, conditions and convenants of these presents."

3. The receipt clause which is annexed in the said agreement indicating payment of Rs.4.0 lacs also says that the said cheques are subject to realisation whereas the said cheques are infact issued on 3.11.98 i.e. 6 months prior to the execution of the said agreement. I inquired from the applicant to show that he is bonafide purchaser and what steps he has taken to ascertain the title of the original respondent and inquiries that there are no decree or

order passed in respect of said respondent and/or that the flat is not subject matter of any such litigation.

4. The learned counsel for the applicant has stated that they have not taken any steps since the respondent and applicant are family friends and known to each other. Therefore, in good trust the said flat has been purchased by the respondent. In the aforesaid circumstances, I reject the contention of the applicant that he is a bonafide purchaser without notice. There is already a decree passed in favour of the decree holder on 13.4.99. The applicant has failed to establish that he is a bonafide purchaser of the said property. In view thereof, it is not possible to accept the contention on the part of the applicant. The Commissioner for Taking Accounts has gone in detail the aforesaid aspects of the matter and I do not find any infirmity in the said order. In view thereof, chamber summons is dismissed. There shall be no order as to costs. Ad interim order is continued till 15.6.05.